

Court of Appeals, State of Michigan

ORDER

Bret Kelly v Allstate Ins Co

Docket No. 286093

LC No. 2006-079830-NF

David H. Sawyer
Presiding Judge

Jane E. Markey

Jane M. Beckering
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court VACATES the circuit court's April 14, 2008, order granting summary disposition to the Docter defendants. The evidence presented establishes that there is a factual dispute as to the nature and extent of plaintiff's injuries, i.e. whether the injuries were the result of the vehicle accident or of a prior injury. The evidence also establishes that plaintiff's impairment is objectively manifested. *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). Regarding the last aspect of the analysis required under *Kreiner*, we find that defendant's circumstances are sufficiently analogous to those in *Benefiel v Auto-Owners Ins Co*, 277 Mich App 412; 745 NW2d 174 (2007), so as to allow the same conclusion as reached in that case, namely that "when viewing the record in the light most favorable to plaintiff, . . . the trial court erred by finding that plaintiff's injury did not affect his general ability to lead his normal life." Therefore, summary disposition was unwarranted. The case is REMANDED for further proceedings consistent with this order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 02 2008
Date

Sandra Schultz Mengel
Chief Clerk